WHEREAS, on March 15, 2020 and by amendments on March 17, 2020, June 5, 2020, July 31, 2020, August 26, 2020, December 14, 2020 and February 22, 2021, I determined that a state of emergency or public danger existed and directed restrictions on all gatherings on public property or public right-of-way; and

WHEREAS, COVID-19 continues to pose a serious and potentially deadly threat to the public and the public health as the Federal Center for Disease Control ("CDC") guidance notes that large events and mass gatherings can contribute to the spread of COVID-19 in the United States by greatly contributing to the spread of the virus to communities; and

WHEREAS, the Governor of Iowa by Proclamation dated April 2 continues to strongly encourage all vulnerable Iowans to continue to limit their activities outside their home including participation in gatherings of any size and any purpose and she continues to encourage all Iowans to limit and to exercise particular care and caution with in-person interactions with vulnerable Iowans and the CDC has noted that events of any size should only be continued if they can be carried out with adherence to guidelines for protecting vulnerable populations, hand hygiene and social distancing; and

WHEREAS, new positive cases of the virus continue at a rate resulting in continued significant community spread in Polk County and in the City of Des Moines and highly transmissible variant-related cases have been detected in Iowa, putting the health care system and City residents at potential risk for the foreseeable future; and

WHEREAS, with the prevalence and expected rise in highly transmissible variant related cases in Polk County measures must be taken to guard against another spike in COVID-19 cases and the community must remain prepared to respond to an increase in virus cases should it occur and the universal use of face coverings and taking measures to ensure the health of those attending gatherings in our community will help reduce the spread of the virus, save lives and keep businesses open and operating; and

WHEREAS, Article III, Section 38A of the Iowa Constitution grants municipalities the power to determine their local affairs and government not inconsistent with the laws of the general assembly; and

WHEREAS, Chapter 364 of the Iowa Code reaffirms the constitutional grant of home rule authority to a municipality “to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the city or its residents, and improve the peace, safety, health, welfare and convenience of its residents”; and

WHEREAS, a “city may exercise its general powers subject only to limitations expressly imposed by a state or city law,” and the exercise of a city power “is not inconsistent with a state law unless it is irreconcilable with the state law.” Iowa Code section 364.2(2) and (3); and

WHEREAS, a city may set standards “more stringent than those imposed by state law, unless a state law provides otherwise.” Iowa Code Section 364.3(a); City of Des Moines v. Gruen, 457 N.W.2d 340, 343 (Iowa 1990); Bryan v. City of Des Moines, 261 N.W.2d 685, 687 (Iowa 1978); and

WHEREAS, chief among the powers of local government is the power to promote and protect the health and safety of its residents, especially during a time when public health is in danger; and

WHEREAS, Iowa Code Section 372.14(2) and the City of Des Moines Municipal Code Section 2-168 grant the Mayor powers in emergency circumstances when public danger exists to take extraordinary steps to protect the public health and safety.

WHEREAS, pursuant to the powers vested in the Mayor under Iowa Code Section 372.14(2) and City of Des Moines Municipal Code Section 2-168, I have issued several proclamations due to the dangers presented by COVID-19 and I have determined that continuation of extraordinary measures are necessary to protect and not worsen the health, safety and welfare within the community; and

WHEREAS, as certain businesses, including bars, restaurants, fitness centers, casinos and recreational facilities remain open with reduced restrictions, exposure of persons to large groups presents serious health risks in the community; and

WHEREAS, the CDC and the Iowa Board of Medicine have determined that face coverings are a critical tool in the fight against COVID-19 that could reduce the spread of the virus, particularly when used universally within communities and the
Iowa Board of Medicine issued a face mask advisory on August 24, 2020, noting that masks are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings; and

WHEREAS, the Governor Proclamation strongly encourages that businesses and gathering organizers take reasonable measures to ensure the health of employees, patrons, participants and members of the public, including social distancing practices, increased hygiene practices, and other public health measures to reduce the risk of transmission of COVID-19 consistent with the guidance of the Iowa Department of Public Health (“IDPH”); and

WHEREAS, the IDPH advises that to help slow the spread of COVID-19 members of the public should wear a mask especially when social distancing measures are difficult to maintain; and

WHEREAS, the Polk County Medical Coordination Center and multiple local physicians and medical associations have endorsed the idea of face coverings in public places, including physicians experienced in epidemiology and infectious diseases; and

WHEREAS, a requirement that persons within the City of Des Moines wear face coverings and a requirement for health measure rules to ensure the health of those attending gatherings are essential to reducing the risk of transmission of COVID-19, and necessary to protect the health, welfare and safety of residents and visitors and accelerate local recovery efforts; and

WHEREAS, a requirement that persons wear face coverings is consistent with the guidance of the IDPH and the Polk County Department of Public Health.

WHEREAS, as the impacts from the steady progress in vaccinations and the prevalence of variant related cases continue to be tracked within Polk County and the State, the City will need to make ongoing adjustments to health measure rules applied to gatherings based on the most current data reflecting either increases or decreases in the community spread of COVID-19 and it is imperative that the City in consultation and acting through its City Manager maintain flexibility in setting appropriate health measure rules so that gatherings can be held in a reasonably safe manner.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OTHER VALID EMERGENT CONCERNS, I, T.M. FRANKLIN COWNIE, MAYOR OF THE CITY OF DES MOINES, PROCLAIM THE FOLLOWING:

I determine that the state of emergency or public danger determined to exist in my Proclamation of March 15, 2020, Proclamation Amendment of March 17, 2020, Proclamation Amendment of June 5, 2020, Proclamation Amendment of July 31, 2020, Proclamation Amendment of August 26, 2020, Proclamation Amendment of December 14, 2020 and Proclamation Amendment of February 22, 2021 still exists and that the guidance referenced herein from the CDC is appropriate and instructional and that the Governor’s prohibitions and requirements are legal and binding.

A. Face Coverings. Consistent with the authority granted me by the Iowa Code and City of Des Moines Municipal Code referenced above, I therefore direct, require and order that all persons in the City of Des Moines shall wear a face covering such as a cloth mask, surgical mask, plastic shield or similar covering that covers their nose and mouth when in a public place in all of the following circumstances unless as excepted in subsection (c) below:

a) 1) When outside one’s residence or dwelling place and unable to stay at least six (6) feet away from other persons;
   2) When inside any indoor public settings or place of public accommodations as defined in City of Des Moines Municipal Code Chapter 62, including without limitation all retail stores, restaurants, bars, taverns and other accommodations;
   3) When in any other public settings that are not one’s residence or dwelling place with persons who do not live in the same residence or dwelling place;
   4) When using public transportation or private car service (including taxis, ride share, or carpooling).

b) No organization that is a public accommodation of any sort, including without limitation, a business that is open to the public, may provide service to a customer or allow a customer to enter its premises, unless the customer is wearing a face covering as required by this Proclamation, and such organizations must post signs at entrance(s) instructing customers of their legal obligation to wear a face covering while inside pursuant to this Proclamation.

c) The provisions of this section shall not apply to the following persons:
   1) Persons under 2 years of age;
   2) Any person who has trouble breathing, is currently on oxygen therapy or on a ventilator;
   3) Any unconscious or incapacitated person or any person who is otherwise unable to remove the face covering without assistance;
   4) Any person who has been told in writing by a medical, legal, or behavioral health professional not to wear face coverings when that writing is carried on the person not using an otherwise required face covering unless such inquiry is prohibited by Federal or State law;
5) Any person actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel;
6) Any person traveling in a personal vehicle alone or with members of the same household;
7) Any person who is alone or in the presence of only members of the same household;
8) Any person exercising at moderate or high intensity (e.g. jogging or biking);
9) Any person seated at a food establishment when actually engaged in the process of eating or drinking;
10) Any person actually obtaining a service that would require temporary removal of the persons face covering (e.g. dental, orthodontic or medical services);
11) Any person for whom a face covering would be violative of a sincerely held religious belief or doctrine;
12) When Federal or State law prohibits wearing a face covering or requires the removal of the face covering.

B. Gatherings. a) The terms restricting indoor and outdoor gatherings contained in Section B of the Proclamation amendment dated February 22, 2021 shall remain in effect through April 30, 2021.

b) I direct that effective May 1, 2021, the City Manager implement reasonable and appropriate health measure rules under the circumstances for each indoor gathering on public property or public right-of-way to ensure the health of City employees and visitors including use of face coverings, social distancing practices, reduced or limited facility or room capacity, increased facility ventilation, increased hygiene practices and other public health measures to reduce transmission of COVID-19 consistent with guidance issued by the IDPH and the CDC. Further, the City Manager, in consultation with the Parks and Recreation Director, is directed to implement such additional reasonable and appropriate health measure rules for any indoor City-sponsored recreational league or activity to ensure the health of all athletes and participants including spectators which may include limitation on the number of athletes, participants and/or spectators to a number that permits social distancing. All indoor gathering, recreational league or activity participants, visitors, athletes or spectators shall comply with all health measure rules and any adjustments thereto imposed by the City Manager to reduce the transmission of COVID-19. The City Manager or his designees are authorized and directed to immediately terminate any non-compliant indoor gathering.

c) I further direct that effective May 1, 2021, the City Manager implement reasonable and appropriate health measure rules under the circumstances for each outdoor social, recreational, community or leisure gathering or event, including, but not limited to a farmers’ market, organized race/run/walk, parade, expressive activity, festival, convention, recreational league or activity, commercial or residential street block party, or fundraiser on public property or public right-of-way to ensure the health of participants and members of the public including use of face coverings, social distancing practices, increased hygiene practices and other public health measures to reduce transmission of COVID-19 consistent with guidance of the IDPH and the CDC and, for any food service, the Iowa Department of Inspections and Appeals. Further, the City Manager is directed to implement such additional reasonable and appropriate health measure rules to ensure the health of all participants which may include a limitation on the number of participants to a number that permits social distancing and, in the case of a previously leased or previously granted concession for exclusive use property, a percentage limitation of facility capacity that permits social distancing. The gathering organizer or sponsor and all participants shall comply with all health measure rules and any adjustments thereto and lawful permit requirements imposed by the City Manager to reduce the risk of transmission of COVID-19. The City Manager or his designees are authorized and directed to revoke an issued permit for any non-compliant outdoor gathering.

As part of the permit application to conduct a gathering or event, the gathering organizer or sponsor must document its willingness, ability and capacity to comply with all the required health measure rules. If the City Manager reasonably determines that the gathering organizer or sponsor is unwilling, unable or otherwise incapable of complying with all the health measure rules, the City Manager shall not issue a permit for the gathering or event and such gathering or event shall be prohibited. I further determine and direct the Police Chief to enforce such direction to avoid any prohibited gatherings or avoid gatherings not in compliance with all health measure rules and any adjustments thereto and/or lawful permit requirements imposed by the City Manager, whether formally or informally organized.

d) I further direct and authorize the City Manager to make adjustments to health measure rules under the circumstances applied to each gathering that may be either more restrictive or less restrictive and are appropriate based on current community spread of COVID-19 so that such gathering can be held in a reasonably safe manner.

e) I further strongly urge—consistent with the recommendations and strong encouragement of the Governor and CDC—that organizers or hosts of indoor and outdoor private gatherings on private property take reasonable and appropriate health measures under the circumstances of each gathering to ensure the health of participants and members of the public in compliance with all applicable requirements and guidance of the Governor Proclamation, IDPH and CDC.

C. Provision of Face Coverings. Given the evidence that demonstrates reduced risk of transmitting and contracting COVID-19 by use of face coverings, I hereby direct the City Manager to continue the City program using his emergency procurement authority to procure and distribute face masks to members of the public not using face masks in the situations above described, utilizing city employees, volunteers, non-profits and other concerned individuals willing to disseminate such face coverings.
D. General. This Amendment to the previously issued and amended Proclamation of emergency and public danger is part of an ongoing response of the City of Des Moines to protect public health and safety and may be modified or superseded with more restrictive proclamations at any time as circumstances warrant and in all other respects and purposes, the prior amended Proclamation as hereby further amended continues in full force and effect.

With respect to the terms of Section (A), Section (B) and this Section (D) herein, per City of Des Moines Municipal Code Section 2-168(c), the public is advised that the violation of a Mayoral Proclamation of emergency or of any subsidiary proclamation thereto evidencing the exercise of emergency powers or of any rule or order issued pursuant thereto by the Mayor or the City Manager or of any order issued pursuant thereto by any peace officer or of any directive issued by designated emergency services personnel pursuant thereto shall constitute a violation of that Section and shall be punishable as a misdemeanor as provided by City of Des Moines Municipal Code Section 1-15.

PROCLAIMED THIS 13TH DAY OF APRIL 2021 BY THE AUTHORITY VESTED IN ME BY THE CODE OF IOWA AND THE CITY OF DES MOINES MUNICIPAL CODE:

[Signature]

T. M. FRANKLIN COWIE, MAYOR

CITY OF DES MOINES